Office - Supreme Court, U.S.
FILED
OCT 18 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-474

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1982

SAFEWAY STORES INCORPORATED,

PETITIONER,

VS.

RONI K. DOGHERRA,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR RONI K. DOGHERRA IN OPPOSITION

CHARLES A. DYER
COTCHETT, DYER & ILLSTON
4 WEST FOURTH AVENUE, STE. 500
SAN MATEO, CALIFORNIA 94402
(415) 342-9000

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii, iii, iv
STATEMENT OF CASE	2
STATEMENT OF FACTS RELEVANT TO THE QUESTIONS PRESENTED FOR REVIEW	3
REASONS FOR DENYING THE WRIT	10
A. Any Nationwide Impact of This Case Will Be As Additional Precedent For Integrity in the Arbitral Process	10
B. The Court of Appeals Was Correct in Affirming That Fraud by An Employer Is A Repudiation of the Arbitral Process	13
C. The Court of Appeals' Affirmation of the Agency Issue Follows Undisputed Precedent	18
CONCLUSION	26

TABLE OF AUTHORIES

CASES	PAGE(S)
Aguirre v. Automotive Teamsters 633 F.2d 168, 174 (9th Cir. 1980)	19
Andrus v. Convoy Company 480 F.2d 604, 606 (9th Cir. 1973)	12
Beriauli v. Local 40 501 F.2d 258, 262 (9th Cir. 1974)	15
Brannon v. Warn Brothers, Inc. 508 F.2d 115, 120 (9th Cir. 1974)	15
Castaneda v. Dura-Vend Corporation 648 F.2d 612, 619 (9th Cir. 1981)	12
Clayton v. ITT Gilfillan 623 F.2d 563, 567n5 (9th Cir. 1980)	15
Drake Bakeries v. Bakery Workers 370 U.S. 254, 260-263	15
Hasbrouck v. Sheet Metal Workers Local 232 586 F.2d 691, 693 (9th Cir. 1978)	22
Hines v. Anchor Motor Freight, Inc. 424 U.S. 554, 570 (1976)	12, 18, 27
International Ladies Garment Workers v. N.L.R.B. 237 F.2d 545, 551 (U.S. App. D.C. 1956)	20
Laborers & Hod Carriers Local 341 v. NLRB 564 F.2d 834, 839 (9th Cir. 1977)	19
Margetta v. Pam Pam Corp. 501 F.2d 179, 180 (9th Cir. 1974)	15

TABLE OF AUTHORITIES (cont'd)

CASES	PAGE(S)
N.L.R.B. v. L.B. Foster Company 418 F.2d 1 (9th Cir. 1969)	25
N.L.R.B. v. Pacific Southwest Airlines 550 F.2d 1148 (9th Cir. 1977)	25
Rabalais v. Dresser Industries, Inc. 566 F.2d 581 (5th Cir. 1975)	16
Robbins v. George W. Prescott Publishing Co., Inc. 457 F.Supp. 915, (D.Mass. 1978) appeal dismissed, 614 F.2d 3 (1st Cir. 1980)	16, 17
Textile Workers v. Lincoln Mills 353 U.S. 457	10
United Brotherhood of Carpenters and Joiners of America v. United States 330 U.S. 395 (1947)	20
Vaca v. Sipes 386 U.S. 171 (1967)	14, 15
White Oak Coal Company v. United Mine Workers of America 318 F.2d 591, 599 (6th Cir. 1963)	19

STATUTES

Federal Rules of Civil Procedure Rule 52(a) 28 U.S.C.	25
Labor Management Relations Action, Sections 301 & 301(a) 29 U.S.C. § 185	2, 20

TABLE OF AUTHORITIES (cont'd)

TREATISES	PAGE(S)
93 Cong. Record, p. 7001, Legislative History of Labor Management Relations Act, vol. 2, p. 1622	21
6A Corbin, Contracts, § 1443 (1962)	15
Holmes, "The Common Law" (rev. ed. 1963)	23
3 Jenkins, Labor Law (2d ed. 1969)	24
Mechem, Outline of the Law of Agency (3rd ed. 1923)	23

No. 82-474

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1982

SAFEWAY STORES INCORPORATED,

Petitioner,

vs.

RONI K. DOGHERRA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR RONI K. DOGHERRA IN OPPOSITION

Petitioner, who prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, contends that the courts below erred in holding that fraud by Petitioner's (employer) management personnel

was a repudiation of the arbitral process.

STATEMENT OF THE CASE

This action was brought by Respondent Roni K. Dogherra against Petitioner Safeway Stores, Incorporated as a result of the wrongful termination of Dogherra's employment with Safeway.

Dogherra's allegations, under Section 301 of the Labor Management Relations Act (29 U.S.C. § 185), were based upon her contention that she had complied with Safeway's implied requirement that an employee on a non-occupational leave of absence had to inform Safeway, prior to the termination of the leave of absence, of the employee's availability to return to work at the completion of the leave of absence.

Safeway vehemently contested this factual issue, even in light of the unequivocal admission of its assistant store manager

that he had lied in the union investigation and the unemployment compensation appeals board hearing. He admitted that, in fact, Dogherra had informed him, prior to the end of her leave of absence, of her availability to return to work after her leave of absence and had requested to be scheduled to work. He also admitted that he had informed the store manager and the secretary at the district office of Dogherra's proper action.

STATEMENT OF FACTS RELEVANT TO THE QUESTIONS PRESENTED FOR REVIEW

Respondent Dogherra was wrongfully terminated from her employment with Petitioner Safeway on June 29, 1976. She has not yet returned to that employment. Dogherra commenced employment at Safeway on June 3, 1974. On December 2, 1975, she commenced a six-month non-occupational leave of absence. On May 18, 1976,

she was released by her doctor to return to work. Prior to June 2, 1976, Dogherra reported to Arthur Martinez, the assistant manager at the Safeway store where Dogherra worked and informed him of her availability to return to work after expiration of the leave of absence and requested to be scheduled for work.

Dogherra was not scheduled to work. She telephoned and visited the Safeway store to determine why she was not on the work schedule. She was told by the store manager that she would be put back on the work schedule just as soon as he could get the schedule "straightened out". However, on June 29, 1976, Dogherra was terminated as Safeway claimed that she had failed to properly report for employment from a six-month non-occupational leave of absence.

Dogherra disputed the reason for termination and immediately contacted her

union, Retail Clerks Union Local 830, and requested aid. The union initiated an investigation into the matter and requested that a Board of Adjustment be convened pursuant to the terms of the Collective Bargaining Agreement. When the union investigator contacted Martinez, the Safeway assistant manager, Martinez blatantly lied and told the investigator that Dogherra had not contacted him about returning to work. In fact, as later admitted by Martinez, Dogherra had reported, and Martinez had informed the Safeway district office and the Safeway store manager that Dogherra had properly reported for work. As the union could not get anyone in the Safeway store where Dogherra had reported to support her contention, the union cancelled the first Board of Adjustment.

Dogherra had also applied for unemployment insurance benefits. At the hearing

before the administrative law judge, Martinez and the store manager denied that Dogherra had informed Martinez prior to June 2, 1976, of her availability to work after her leave of absence and of her request to be scheduled for work. Thus, benefits were denied. However, the California Unemployment Insurance Appeals Board on January 18, 1977, reversed the initial decision, finding that Dogherra had communicated her intention to return to work before the expiration of her leave of absence.

Motivated by Dogherra's urgings and the success of the decision of the California Unemployment Insurance Appeals Board, the union again investigated the facts. The president of Local 830 went to the Safeway store where Dogherra had been employed and again was told by both the manager, and Martinez, the assistant manager, that Dogherra had not reported

for employment on a timely basis. However, as Dogherra was adamant, the union proceeded with a request for a Board of Adjustment.

An arbitration was convened on July 12, 1977. The union wanted to proceed on the merits of the case. Safeway refused and stated through its representative that it would not proceed with any arbitration on the merits. The exchange was as follows:

> THE ARBITRATOR: Well, then I gather the case is submitted on the matter of arbitrability?
>
> MR. BUNCH (union representative): Yes.
>
> THE ARBITRATOR: The union wants to proceed on the question of merits and the company does not, as I gather the respective positions.
>
> MR. BUNCH: Right.
>
> MR. BACON (Safeway representative): The company will not.
>
> THE ARBITRATOR: Aside from whether you will or you won't?
>
> MR. BACON: I do not and will not.
>
> THE ARBITRATOR: OK. That means that the records should indicate

> that in this kind of a case I will have to decide the question of arbitrability first . . . .

The arbitrator, deciding only the questions of arbitrability, reached the decision that the Dogherra grievance was not arbitrable. There was no decision on the merits. The arbitrator reasoned that the Board of Adjustment meeting had been cancelled because "the union had made an investigation and believed that it did not have a suitable case to proceed to the Board of Adjustment" (Pet. App. E, p. A-33), and that seeking to reconstitute a system Board of Adjustment in this matter some five months after scheduling the original Board of Adjustment, was violative of the principle that the adjustment of grievances should be completed within a reasonable time (Pet. App. E, p. A-34). Martinez and Clough, the Safeway store manager, were present at the arbitration, but neither testified.

As Dogherra had exhausted her remedies, this litigation was commenced and a plethora of legal paperwork followed. During discovery Arthur Martinez finally told the truth. He admitted that, when the store manager was gone and he was acting as manager, Dogherra had contacted him prior to June 2, 1976, and informed him of her availability to return to work after her leave of absence and requested to be scheduled for work. He also admitted he had informed the store manager, when he returned from vacation, that Dogherra had called and wanted to get back on the work schedule, and that he had also informed the secretary at the Safeway district office.

After all the previous lying, Martinez had pangs of conscience and approximately two-three weeks prior to his deposition of May 25, 1978, met with Robert A. Dolinko, one of Safeway's attorneys in this

litigation, and a union representative and told them the truth. He even entered a plea of no contest to a perjury charge in regard to his untruthful testimony at the California Unemployment Insurance Appeals Board hearing. Since the deposition Martinez has continued to tell the truth concerning Dogherra's reporting for work. Safeway has stubbornly refused to abide by the truth.

REASONS FOR DENYING THE WRIT

A. Any Nationwide Impact of This Case Will Be As Additional Precedent For Integrity in the Arbitral Process

The decision of the Ninth Circuit Court of Appeals in this matter merely follows established and common sense precedent in holding that "fraud is a ground for vacating an arbitral award under . . . the federal common law fashioned from the policy of the national labor laws under the authorization of Textile Workers v. Lincoln Mills, 335 U.S. 457" (Pet. App. A, p. A-6)

This holding is certainly not a threat to the national labor policy or the decisions of this Court. To the contrary, a holding, as requested by Safeway, that there be no recourse to a decision obtained by fraud would be contrary to other decisions and to national labor policy. Furthermore, the holding of the Ninth Circuit Court of Appeals that "intentionally giving a false statement to union investigators causing them to drop a grievance until after it was time-barred also constitutes fraud", (Pet. App. A, p. A-7), is certainly not contrary to any precedent.

The opinion specifically notes that "courts must be slow to vacate an arbitral award on the grounds of fraud", (Pet. App. A, p. A-7), and then sets forth the formidable criteria which must be followed: (1) The fraud must not have been discoverable upon the exercise of due diligence prior to the arbitration; (2) the fraud

must materially relate to an issue in the arbitration; and (3) the fraud must be established by clear and convincing evidence (Pet. App. A, p. A-7).

The Appellate Court's holding herein follows the decisions of a host of other courts: Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 563 (1976); Castaneda v. Dura-Vend Corporation, 648 F.2d 612, 619 (9th Cir. 1981); Andrus v. Convoy Company, 480 F.2d 604, 606 (9th Cir. 1973); and Harris v. Chemical Leaman Tank Lines, 437 F.2d 167, 171 (5th Cir. 1971).

In a last gasp effort Safeway also attempts to employ the "burden on the courts" scare tactic in an attempt to avoid its fraud. Holding that parties to collective bargaining agreements must engage in fair dealing and allowing recourse for deceitful, untruthful and fraudulent conduct is not a "dangerous new doctrine" that will cause pandamonium with the

courts as Safeway suggests. It is simply a promotion of the cornerstone concepts of fair and truthful actions.

B. The Court of Appeals Was Correct in Affirming That Fraud by An Employer Is A Repudiation of the Arbitral Process

The trial court found from the evidence presented that:

> Defendant [Safeway] by the untruthfulness of its employee, Arthur Martinez, in the union's investigative proceeding thwarted and subverted Plaintiff's efforts to arbitrate her grievance through a Board of Adjustment proceeding and thus the contractual machinery could not operate within the minimum level of integrity that Congress had anticipated when it put its blessings on private dispute settlement arrangements . . . .
>
> Defendant employer by the untruthfulness of its employee, Arthur Martinez, in the union's investigative process has caused the arbitral process to err and thus Plaintiff employee has a valid cause of action against Defendant employer . . . . (Pet. App. D, p. A-24).

Safeway contends that the Appellate Court was in error in affirming the finding that fraud is a repudiation of the arbitral process.

In Vaca v. Sipes, 386 U.S. 171 (1967), this Court, mostly in dicta, established that an employee could seek justice from the courts against the employer concerning employee section 301 actions for wrongful discharge, even though contractual remedies were not exhausted. The Court reasoned as follows:

> [B]ecause these contractual remedies have been devised and are often controlled by the union and the employer, they may well prove unsatisfactory or unworkable for the individual grievant. The problem then is to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his remedial procedures.
>
> An obvious situation in which the employee should not be limited to the exclusive remedial procedures established by the contract occurs when the conduct of the employer

> amounts to a repudiation of those contractual procedures. Cf. Drake Bakeries v. Bakery Workers, 370 U.S. 254, 260-263. See generally 6A Corbin, Contracts § 1443 (1962). In such a situation (and there may of course be others), the employer is estopped by his own conduct to rely on the unexhausted grievance and arbitration procedures as a defense to the employee's cause of action. (Id. at 185) (emphasis added).

Although Vaca v. Sipes, supra, concerned only the federal court's jurisdiction of employee causes of action against a union for failure to represent, the Ninth Circuit Court of Appeals applied the reasoning, and it is clear that under proper circumstances an employee may bring a wrongful discharge suit against an employer (Clayton v. ITT Gilfillan, 623 F.2d 563, 567n5 (9th Cir. 1980); Brannon v. Warn Brothers, Inc., 508 F.2d 115, 120 (9th Cir. 1974); Margetta v. Pam Pam Corp., 501 F.2d 179, 180 (9th Cir. 1974); and Beriauli v. Local 40, 501 F.2d 258, 262 (9th Cir. 1974)).

Safeway's reliance on Rabalais v. Dresser Industries, Inc., 566 F.2d 581 (5th Cir. 1975) and Robbins v. George W. Prescott Publishing Co., Inc., 457 F.Supp. 915 (D.Mass. 1978), appeal dismissed, 614 F.2d 3 (1st Cir. 1980), is misguided. Neither case has any showing of employer wrongdoing. In Rabalais the employee participated in the first three stages of the grievance process. Then neither the employer nor the union sought the final step of arbitration. The employer took the position that the employee's claim was not a proper one for grievance. In Robbins the plaintiff-employee soon after his discharge from employment disassociated himself from his union's efforts on his behalf even though the union and the employer remained willing to go to arbitration.

It is agreed that in neither Rabalais nor Robbins did the employer's conduct rise

to the level of repudiation. The conduct of the employers in each case is easily distinguishable from the fraudulent conduct of Safeway in this matter.

An employee has to exhaust the contractual remedies except in "those limited instances in which an employee is prevented or obstructed from exhausting grievance and arbitration procedures because of wrongful employer or union conduct" (Robbins, supra, 457 F.Supp. at p. 920) (emphasis added). That precedent applies in this case. It is absolutely clear and established by the findings of fact and conclusions of law of the trial court that Safeway, through the lies of Martinez, "prevented" and "obstructed" Dogherra from pursuing her deserved contractual remedies. The lies of Martinez to union investigators brought about the droppoing of the Board of Adjustment and caused the delay in further attempts at arbitration which

resulted in a decision that Dogherra's grievance was not arbitrable because it was not completed in a reasonable time. The entire collective bargaining arbitration procedure was subverted by the known and admitted dishonesty of the Safeway assistant manager, Martinez. This amounts to repudiation by Safeway. Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 570 (1976) states this reasonable logic. As interpreted by the trial court herein:

> . . . The logic of Hines seems clear and unmistakable, and, what is more, it is consistent common sense. An artful liar should not be allowed to succeed in thwarting an employee's attempt to raise a grievance . . . . Such a result would be unfair to the employee, contrary to congressional intent, and the utmost foolishness. (484 F.Supp. 396, 400-401 (N.D.Cal. 1980)).

C. The Court of Appeals' Affirmation of the Agency Issue Follows Undisputed Precedent

Whether or not an individual was or was not an agent is a question of fact

which the trier of fact decides from direct or circumstantial evidence (White Oak Company v. United Mine Workers of America, 318 F.2d 591, 599 (6th Cir. 1963). The trial court herein found that:

> Defendant, acting through its management representative, Arthur Martinez, acted in bad faith when he lied about Plaintiff's timely request to return to work . . . (Pet. App. D, pp. A-23, A-24). (emphasis added).

Safeway contends that Martinez' conduct should not be chargeable to it, the employer, and argues that the Appellate Court erred in affirming the trial court. As stated in the Ninth Circuit Court of Appeals' opinion, "A finding that one person is another's agent is generally reviewed as a question of fact, governed by the clearly erroneous standard", citing Aguirre v. Automotive Teamsters, 633 F.2d 168, 174 (9th Cir. 1980; Laborers & Hod Carriers Local 341 v. NLRB, 564 F.2d 834, 839 (9th Cir. 1977) (Pet. App. A, p. A-3).

The issue of agency in regard to uniform labor practices under the Labor Management Relations Act is referred to in Section 301(e) (29 U.S.C. 185). It states:

> For purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Section 301(e) was enacted to eliminate the strict requirement for proof of authorization and ratification which the Supreme Court read into a somewhat comparable section of the Norris-LaGuardia Act in its opinion in United Brotherhood of Carpenters and Joiners of America v. United States, 330 U.S. 395 (1947). (International Ladies Garment Workers Union v. N.L.R.B., 237 F.2d 545, 551 (U.S. App.D.C. 1956)). Congress intended

by the language of this statute to "restore the applicability of common law agency principles of responsibility . . ." (Id. at p. 551).

The major proponent of the bill made the following analysis of the agency section, 93 Cong. Record, p. 7001, Legislative History of Labor Management Relations Act vol. 2, p. 1622:

> Section 2(2), 2(13), and 301(e): The conference agreement in defining the term employer struck out the vague phrase in the Wagner act 'any-one acting in the interest of an employer' and inserted in lieu thereof the word 'agent'. The term agent is defined in section 2(13) and section 301 (e), since it is used throughout the unfair labor practice sections of title I and in sections 301 and 303 of title III. In defining the term the conference amendment reads 'the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.' This restores the law of agency as it has been developed at common law.

> . . . Of course, the definition applies equally in the responsibility imputed to both employers and labor organizations for the acts of their officers or representatives in the scope of their employment.
>
> . . . The conferees agreed that the ordinary law of agency should apply to employer and union representatives. Consequently, when a supervisor acting in his capacity as such, engages in intimdating conduct or illegal action with respect to employees or labor organizers his conduct can be imputed to his employer regardless whether or not the company officials approved or were even aware of his actions
> . . . .

Therefore, the principles of common law agency are to be applied under section 301 in determining whether any person is acting as an agent. Hasbrouck v. Sheet Metal Workers Local 232, 586 F.2d 691, 693 (9th Cir. 1978). The subject of agency belongs to a relatively recent period in our law. It is derived from common law and commenced with the master-servant relationship. As historically described by Justice Oliver Wendell Holmes

in his book, "The Common Law", masters became personally liable for certain wrongs committed by their slaves. Later, shipowners and inkeepers were made liable for the wrongs committed by those in their employ even though acts were committed without their knowledge. These were the first instances of a master being made unconditionally liable for the wrongs of his servant. This principle expanded to the responsibility of the master to those he employed even though they were free and not slaves and this became the general law. (Holmes, "The Common Law" (rev. ed. 1963) p. 16-17).

"The word agency denotes the relation which exists when one person is employed to act for another" (Mechem, Outline of the Law of Agency (3rd ed. 1923) p. 6). The relationship of principle and agent "is the legal relation which exists where one person, called the agent, is employed

and authorized by another, called the principal, to represent and act for the latter in his contractual or business dealings with third persons" (Id. at p. 7).

In practical application to the field of labor law we shall be guided by the familiar rule of agency:

> . . . that a principal may be responsible for the act of his agent within the scope of the agent's general authority or the 'scope of his employment' if the agent is a servant, even though the principal has not specifically authorized or indeed may have specifically forbidden the act in question. It is enough if the principal actually empowers the agent to represent him in the general area which the agent acted (Matter of Sunset Line and Levine Company, 79 NLRB No. 207). (3 Jenkins, Labor Law, (2nd ed. 1969) p. 11-12).

Martinez was the assistant manager of the Safeway store where Dogherra was employed. Martinez had authority to receive the information from Dogherra that she was ready to return to work. Martinez was empowered to represent the

store in dealing with other employees. He was undoubtedly the agent of Safeway.

Also, in closing on this issue, this Court's review should be closely analogous to the decisions in N.L.R.B. v. Pacific Southwest Airlines, 550 F.2d 1148 (9th Cir. 1977) and N.L.R.B. v. L.B. Foster Company, 418 F.2d 1 (9th Cir. 1969). In these cases it was decided that once it was found that the employer "acted through" the employee and since the agency was supported by substantial evidence, then the employee's acts are attributed to the employer. The trial court in the case at bar found that Safeway "acted through" Martinez. The findings of the trial court were not to be set aside by the Ninth Circuit Court of Appeals unless they are clearly erroneous (Fed. Rules Civ. Proc. Rule 52(a) 28 U.S.C.). The acts of Martinez are attributable to Safeway.

CONCLUSION

It has been six years and four months since Roni K. Dogherra was wrongfully and fraudulently terminated from her employment as a journeyman clerk with Safeway. She continued to battle through the administrative and legal requirements and finally received a hearing on the merits by obtaining a trial in the District Court. In that trial the truth was obtained and, she was awarded a judgment in her favor. Furthermore, the District Court found that Safeway, though its agent, acted in bad faith and "further acted oppressively in pursuing this action after the truth was known and particularly in bringing needless, almost frivolous motions which had the result of unnecessarily increasing the amount of time plaintiff and her attorney were obliged to devote to this litigation." (Pet. App. D, p. A-24). The oppression

continues. The time plaintiff and her attorney are obliged to devote to this litigation continues, also.

There is no error by the Ninth Circuit Court of Appeals in the issues argued by Safeway. The opinion does not create a dangerous doctrine. It does require fair dealing and truthfulness by the employer in disputes with employees. To find otherwise would be dangerous doctrine.

> Congress has put its blessing on private dispute settlement arrangements provided in collective agreement, but it was anticipated, we are sure, that the contractual machinery would operate within some minimum levels of integrity. (Hines v. Anchor Motor Freight, Inc., supra, 424 U.S. 554 at p. 571).

This requirement must be perpetuated.

The Petition for Writ of Certiorari should be denied.

DATED: OCT 12 1982

Respectfully submitted,

COTCHETT, DYER & ILLSTON

By CHARLES A. DYER
CHARLES A. DYER
Attorneys for Respondent

PROOF OF SERVICE BY MAIL
PURSUANT TO 28 U.S.C.
and C.C.P. §§ 1013(a), 2015.5

I am a citizen of the United States; my business address is Bank of California Building, 4 West Fourth Ave., Suite 500, San Mateo, California, 94402; I am employed in the County of San Mateo, where this mailing occurs; I am over the age of eighteen (18) years and not a party to the within cause. I served the within MEMORANDUM FOR RONI K. DOGHERRA IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI on the following persons on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mailbox in San Mateo, California, adressed as follows:

ALAN B. CARLSON
RICHARD H. HARDING
HENRY D. LEDERMAN
Counsel of Record
LITTLER, MENDELSON, FASTIFF & TICHY
650 California St., 20th Floor
San Francisco, CA 94108

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on October 12, 1982, at San Mateo, California.

Shirley Buchignani
SHIRLEY BUCHIGNANI